

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 256 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 : NO

MADHAJI PUNJAJI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR YF MEHTA for Petitioner
MR SR DIVETIA APP for Respondent No. 1
MR MB GANDHI for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/08/98

ORAL JUDGEMENT

Heard learned advocates for the respective parties. This petition has been preferred against the judgment and order dated 11th March, 1998 passed by the learned Addl. Sessions Judge, Ahmedabad {Rural}, Gandhinagar in Criminal Revision Application No. 9 of 1996 confirming the judgment and order dated 3rd August,

1996 passed by the learned 3rd JMFC, Gandhinagar in respect of the interim possession of the muddamal Truck bearing registration No. GJ-2T-7621 {hereinafter referred to as "the Truck"}. It appears that on 10th October, 1995, one Chimanbhai Thakore, the respondent no. 2 herein lodged a complaint before the learned JMFC, Gandhinagar against the present petitioner for alleged commission of offence punishable under Section 420, 406-A, 504, 506 (2) IPC. It was the claim of the complainant herein that on 28th January, 1992 he had agreed to purchase the Truck from one Rambhai Patel of village Lodhara for a sum of Rs. 4,25,000/-. In view of the said agreement, complainant had paid a sum of Rs. 2,10,000/- in due discharge of the loan borrowed from the Bank by said Rambhai Patel and the complainant had to pay Rs. 2,15,000/- in cash within a period of two months therefrom and on his paying the aforesaid amount of Rs. 2,15,000/- the Truck was agreed to be transferred in the name of complainant. In the meantime, the papers were entrusted to one M/s. Patel Auto Adviser and on payment of entire amount, the registration of the Truck was to be transferred in the name of the complainant. Pursuant to the agreement, possession of the Truck was handed over to the complainant. It was alleged that three days before the date of complaint, the accused; petitioner herein, had approached the complainant and had borrowed the Truck from him for his personal purposes for two days. However, after two days he did not return the Truck to the complainant and upon inquiry, he refused to do so and informed the complainant that the Truck was transferred by the Transport Authorities in the name of the accused and the accused threatened the complainant to kill him if the complainant made further demand of the Truck. Pending investigation, the complainant made an application for recovery of the possession of the Truck which was granted and the Truck was recovered by the police and has been kept in the police custody. The complainant and the accused both made applications Exhs. 1 & 5 respectively under Section 451 CrPC for the interim possession of the Truck, pending prosecution. The learned Magistrate under his order dated 3rd August, 1996 directed that the interim possession of the Truck should be handed over to the complainant Chimanbhai on his giving a surety for the amount equivalent to 1 1/2 times {probably of the value of the Truck}. Feeling aggrieved, the petitioner preferred Criminal Revision Application No. 9 of 1996 before the learned Addl. Sessions Judge, Ahmedabad Rural, Gandhinagar. The learned Addl. Sessions Judge, Ahmedabad Rural held that the order was in respect of interim possession of the Truck and the same being an interlocutory order, revision under Section

397 CrPC was not maintainable. Further, on merits also, the learned Addl. Sessions Judge did not consider it fit to interfere with the order of the learned Magistrate. He, therefore, under the impugned order dated 11th March, 1998 dismissed the application. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Mehta, the learned advocate appearing for the petitioner has submitted that the learned Addl. Sessions Judge has committed a manifest error in holding that the order made in respect of the interim possession of the Truck pending trial was an interlocutory order and the revision against the same was not maintainable. He has relied upon the judgment of this Court in the matter of Thakaar Mahendraprasad Bapalal & Anr. v. The State of Gujarat & Anr., {1985 GLR 61}. In the said judgment, this Court has categorically held that, "... even an order made in respect of interim possession of muddamal article is in a way a final order deciding the rights of the parties to retain possession of the muddamal article during the pendency of the trial. Revision against such an order, therefore, would be maintainable." Mr. Mehta has further argued that it is an admitted fact that the petitioner had paid a substantial amount towards the purchase price of the Truck before getting the Truck registered in his name and that on the date of the recovery of the possession of the Truck, the petitioner was a registered owner of the Truck. He has further submitted that the complainant had willfully handed-over the possession of the Truck to the petitioner and thus, the petitioner was in lawful possession of the Truck. Thus, the Truck having been recovered from the lawful possession of the petitioner who also happens to be a registered owner thereof, the interim possession of the Truck ought to have been handed over to the petitioner. Mr. Mehta has also relied upon the judgement of the Rajasthan High Court in the matter of Sikander Beg v. State of Rajasthan & Anr., {1993 Cri.L.J. 1114}. He has particularly relied upon paragraph 16 of the judgment. In the said paragraph, the Court has held that, "..... the interim custody of the motor vehicle should generally be given to the registered owner or in whose name the permit stands..... In absence of clear, cogent, convincing and reliable evidence a motor vehicle should not be given to a person, who is neither a registered owner, nor has valid permit for plying the vehicle, nor has been duly and validly entrusted with it, even if the police took possession of the same from him..."

Petition has been contested by Mr. Gandhi

appearing for the respondent no. 1. Mr. Gandhi has strongly relied upon agreement for sale of the Truck made in favour of the complainant and the fact that the substantial amount has been paid by the complainant towards the purchase price. He has also submitted that the loan amount borrowed by the Vendor-Rambhai Shivrambhai Patel from the Bank has also been repaid by the complainant in due compliance of the terms of agreement. The possession of the Truck was taken from the complainant by the accused by misrepresentation. The complainant was in lawful possession of the Truck and he is, therefore, entitled to retain the possession thereof, pending trial.

I have considered the rival arguments. It is evident that the learned Addl. Sessions Judge has committed a manifest error in holding that the revision against the order in respect of muddamal article would not be maintainable. In view of the judgment of this Court in the matter of Thakaar Mahendraprasad Bapalala {Supra}, the proposition made by the learned Addl. Sessions Judge cannot be sustained. Further, it is undisputed that the petitioner has paid substantial amount towards the Sale price of the Truck, the possession of the Truck was handed over to him by the complainant willingly and that the Truck was recovered from the possession of the petitioner. Further, on the date of recovery of the possessions, the petitioner was the registered owner of the Truck. Besides, it appears that till the date of the complaint, the complainant had not paid the entire amount of the sale price nor the Truck was transferred in the name of the complainant. The complaint has been lodged on 10th October, 1995 and it has been stated therein that three days before the date of the complaint, accused had requested to give him the Truck for two days and that during those two days, he paid the remaining amount of purchase price and also got registration of the Truck transferred to his name. However, on perusal of the Permit {Mark 7/3} issued by the Transport Authority at Ahmedabad, it appears that registration was transferred in the name of the accused-petitioner on 20th July, 1995 i.e., more than a month before the date of the complaint. Thus, prima facie, it does appear that the possession of the Truck was handed over by the complainant to the accused willfully long before the date of the complaint. In my view, considering the fact that on the date of recovery of possession, the petitioner was the registered owner of the Truck and that the petitioner was in lawful possession thereof, the interim possession of the Truck, pending trial, ought to have been handed over to the

petitioner.

In view of the above discussion, this application is allowed. The impugned judgments and orders of the Courts below are quashed and set-aside. The possession of the Truck bearing registration No. GJ-2T-7621 be handed over to the petitioner herein, pending trial, on conditions that :

- (i) the petitioner shall furnish surety for a sum of Rs. 2 lacs to the satisfaction of the learned Magistrate and a personal bond for the like amount;
- (ii) petitioner shall not transfer or alienate the Truck in any manner, pending trial and shall not hand over possession of the Truck to any other person;
- (iii) petitioner shall maintain the Truck in road worthy condition and shall not change appearance of the Truck without the express permission of the learned Magistrate;
- (iv) petitioner shall not ply the Truck beyond the limits of State of Gujarat;
- (v) petitioner shall produce the Truck before the learned Magistrate as and when he is required to do so; and
- (vi) petitioner shall give an undertaking to this Court within two weeks from today to the effect that he shall abide by all the aforesaid terms & conditions.

Rule is made absolute accordingly. There shall be no order as to costs. Registry is directed to send the writ forthwith.

Prakash*